

JUL 05 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

Wesley J. Brazas, Jr. )  
    *Petitioner* )  
    v. )  
Mr. Jeff Magnussen, President )  
Village of Hampshire )  
    and the )  
Illinois Environmental Protection Agency )  
    *Respondents* )

PCB 06-131  
(Appeal from IEPA decision  
granting modified NPDES permit)

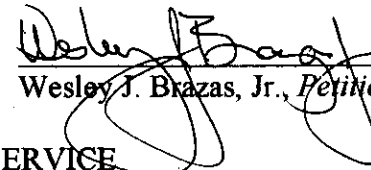
NOTICE OF FILING

TO:  
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1021 North Grand Avenue East  
Springfield, IL 62794-9276

Ms. Jane L. Collins  
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Woodstock, IL 60098

PLEASE TAKE NOTICE that on July 5, 2006, I filed with the Clerk of the Office of the Pollution Control Board, and original and nine (9) copies of *Petitioner's Response to Respondent Jeff Magnussen's Motion to Strike Appellant's Brief and Argument on Appeal*, a copy of which is attached hereto and hereby served upon you.

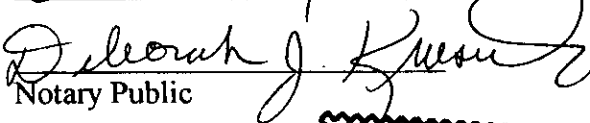
  
Wesley J. Brazas, Jr., *Petitioner. Pro se*

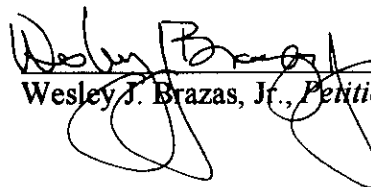
PROOF OF SERVICE

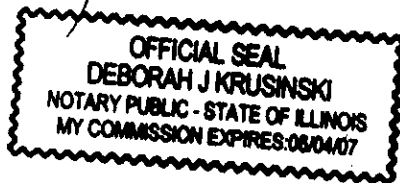
I, the undersigned, on oath state that I have served on the date of July 5, 2006, the attached *Petitioner's Response to Respondent Jeff Magnussen's Motion to Strike Appellant's Brief and Argument on Appeal* upon each person/agency to whom it is directed by placing a copy of same into an envelope correctly addressed as aforesaid and bearing sufficient first class postage prepaid, and depositing same with the United States Post Office before 5:00 p.m. on July 5, 2006.

Subscribed and Sworn to me this

5<sup>th</sup> day of July 2006.

  
Notary Public

  
Wesley J. Brazas, Jr., *Petitioner, pro se*



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PCB 06-131

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**PETITIONER'S RESPONSE TO RESPONDENT JEFF MAGNUSSEN'S MOTION TO STRIKE APPELLANT'S BRIEF AND ARGUMENT ON APPEAL**

NOW COMES THE PETITIONER, Wesley J. Brazas, Jr., and as for *Petitioner's Response to Respondent Jeff Magnussen's Motion to Strike Appellant's Brief and Argument on Appeal*, states as follows:

1. Petitioner admits Paragraph 1 of Magnussen's Motion that this matter comes before the Board on the IEPA's December 9, 2005 modification of NPDES Permit No. IL 0020281 to permit the Village of Hampshire to more than double the discharge of its wastewater treatment plant to 1,500,000 gpd (DAF) / 4,170,000 gpd (DMF) into the Section 303(d) listed Hampshire Creek from the currently permitted 750,000 gpd (DAF) / 1,880,000 gpd (DMF) issued on July 21, 2004.
2. Petitioner admits Paragraph 2 of Magnussen's Motion.
3. Petitioner denies Paragraph 3 of Magnussen's Motion.
4. Petitioner denies Paragraph 4 of Magnussen's Motion. *Petitioner's Petition for Review* frames the issues before the Board.

5. Petitioner denies Paragraph 5 of Magnussen's Motion as it is not an accurate restatement of the statute. The statute, and case law interpreting said statute, speaks for itself.
6. Petitioner denies Paragraph 6 of Magnussen's Motion as Appellant affirmatively states said Orders were improperly decided. Said Orders are in contravention to the mission of the Pollution Control Board "to restore, protect, and enhance the environment for all Illinois citizens".<sup>i</sup>
7. Petitioner cannot comment on Paragraph 7 of Magnussen's Motion as "The rule" is without reference.
8. Petitioner denies Paragraph 8 of Magnussen's Motion.
9. Petitioner denies Paragraph 9 of Magnussen's Motion as it is an isolated statement taken out of context. It is the nature of our legal system that if the existing statutes and regulations are not sufficiently protective of the environment, their validity is challenged through litigation of their application on a specific matter, such as, the case at bar.
10. Petitioner denies Paragraph 10 of Magnussen's Motion. See the Mission statement of the Board.
11. Petitioner denies Paragraph 11 of Magnussen's Motion.
12. Petitioner states Mr. Magnussen did not provide prior notice of the filing of the Magnussen *Motion* and that Petitioner is a member of the armed forces and was outside the State of Illinois on active military duty including the period of the filing of Magnussen's Motion to July 2, 2006. In accordance with the provisions of the

Servicemembers Civil Relief Act, Pub. L. No. 108-189 (2003), Petitioner request that the Board find this Response timely filed.<sup>ii</sup>

### **CONCLUSION**

The Board must clearly understand that Hampshire Creek became a 303(d) listed stream back when Hampshire's permitted maximum Wastewater Treatment Plant discharge was only 456,000 gpd (DAF). Since Hampshire's WWTP discharge is one of the suspected causes of stream impairment, Mr. Magnussen has an affirmative duty to perform a TMDL study to determine the specific causes of stream impairment and maximum loadings from point and non-point sources in order for Hampshire Creek to regain its environmental health. The requirement for a TMDL study is even more urgent as Mr. Magnussen is now requesting a more than threefold increase in the point source discharge of the WWTP and the non-point source pollution from Mr. Magnussen's approval of the conversion of over 15,000 acres of agricultural farmland into rooftops.

It is sadly unfortunate Mr. Magnussen, as the local government authority, continues to willfully fail in his duty to protect the environment of the Village of Hampshire by steadfastly refusing to perform a TMDL study for Hampshire Creek. This litigation could have been easily avoided if Mr. Magnussen had performed a TMDL study for Hampshire Creek and demonstrated the increase in discharge for the WWTP was within the TMDL limits. But Mr. Magnussen has not.

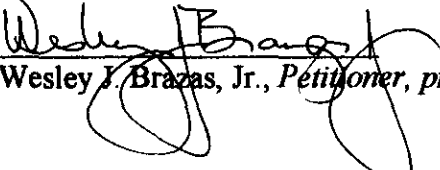
This litigation could have been easily avoided if Mr. Magnussen had completed the potable water supply study and had determined the effects of changing the permitted land use over the most sensitive recharge area of the Bloomington Aquifer from agriculture to condos and parking lots would not degrade the aquifer. But Mr. Magnussen has not.

This litigation could have been easily avoided if Mr. Magnussen had completed a Motor Vehicle Emission Budget (MVEB) study on the effects of converting over 15,000 acres of farmland (with a net positive contribution to air quality) to rooftops and highways (with a major net negative to air quality) and demonstrating said conversion of farmland to rooftops was within the MVEB's set by the RTP and would not cause backsliding in the Northeastern Illinois Ozone Non-Attainment Area. But Mr. Magnussen has not.

This litigation could have been easily avoided if Mr. Magnussen had has designed the proposed WWTP increased flows to 4,170,000 gpd (DMF) to not increase the flood stage elevation on Hampshire Creek. But Mr. Magnussen has not.

WHEREFORE, for the reasons stated above, Petitioner requests this Board deny Mr. Magnussen's *Motion to Strike Appellant's Brief and Argument on Appeal*. Respondents Mr. Magnussen and the IEPA have failed in their statutory duty to protect the air quality and water quality of the Hampshire area by the issuance of this modified permit and Petitioner asks that the Illinois Pollution Control Board grant the relief Petitioner seeks by setting aside said modified permit and remanding to the Illinois Environmental Protection Agency for issuance of a permit denial letter.

Respectfully submitted,

  
Wesley J. Brazas, Jr., *Petitioner, pro se*

Dated: July 5, 2006

i See [www.ipcb.state.il.us/AboutTheBoard/MissionStatementandStrategicPlan.asp](http://www.ipcb.state.il.us/AboutTheBoard/MissionStatementandStrategicPlan.asp).

ii The Illinois Pollution Control Board is an "administrative agency" subject to the requirements of the Act. See Section 101(5) which states "The term 'court' means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record."